IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 932 of 1986
with
FIRST APPEALS NO.933 to 938 OF 1986
with
CROSS OBJECTIONS IN F.As. NO. 932 & 934 of 1986

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

MAHENDRAKUMAR HIRALAL SHAH

Appearance:
1. First Appeals No. 932 to 938 of 1986
MR MD PANDYA for the Appellant.
MR SC VAKHARIA for Respondent No. 1
MS LILU K BHAYA for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: /07/2003

C.A.V. JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. These appeals arise out of a judgment and order rendered by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural), at Narol, on 24th September, 1985, in Motor Accident Claim Cases No.562 of 1982, 560 of 1982, 320 of 1982, 401 of 1982, 534 of 1982, 548 of 1982 and 760 of 1982. As all the claim cases arose out of the same accident, they were clubbed together and disposed of by a common judgment by the Tribunal, as stated above. Likewise, these appeals arise out of the same common judgment arising out of the same accident and, therefore, they are heard and decided by this common judgment.

2. An accident occurred on 26th February, 1982, opposite Shakti Rise Mill, on National Highway No.8, near Bhamaria Kuva, Lambha. Vehicles involved in the accident were a Standard Herald Car bearing No.GAA 5910 and S.T. Bus bearing No.GRT 7273. The car was being driven by one Mahendrakumar Hiralal Shah, claimant in M.A.C. Case No.562 of 1982 and the bus was driven by Kaluji Mangsingji Thakore. The rest of the claimants were occupants of the bus in question, at the relevant time.

3. The case of the claimants was that the bus was going from Ahmedabad side to Baroda side, i.e. from North to South, and the car was coming from Baroda to Ahmedabad, i.e. from South to North. It is further case of the claimants that the accident occurred while the driver of the bus attempted to overtake a truck going ahead of him and in doing so, he went on the wrong side of the road, neglecting the oncoming Standard Herald Car which was being driven at a moderate speed on the correct side of the road. The bus and the car dashed, whereafter, the bus fell into a ditch after travelling distance of about 180 feet from the scene of accident. The driver of the car sustained severe injuries on leg, eyes and other parts of the body. The other claimants who were travelling in the bus also sustained injuries and have, therefore, preferred various claim applications. The Tribunal, after considering the evidence on record, gave a finding that the driver of the bus was solely responsible for the mission and there was no negligence so far as the driver of the car was concerned and held that the driver of the bus and the S.T. Corporation were jointly and severally liable to pay the compensation.

3.1 Proceeding to quantify the amount of compensation, the Tribunal has taken into consideration various aspects touching each of the case and has awarded various amounts to the claimants.

4. Aggrieved by the said judgment and award, the S.T. Corporation has preferred these appeals assailing the judgment and award on negligence as well as quantum.

5. Claimant-Mahendra Hiralal Shah of M.A.C. Case No.562 of 1982, opponent No.1 in First Appeal No.932 of 1986 and Claimant-Nanubhai Narsihbhai Patel of M.A.C. Case No.320 of 1982, opponent No.1 in First Appeal No.934 of 1984 have filed Cross Objections.

6. Heard learned Advocate Miss Desai on behalf of learned Advocate Mr. M.D. Pandya appearing for the appellant. Her contention is that the Tribunal has grossly erred in throwing the burden of negligence on the driver of the bus. She submitted that, if the evidence of witness-Bharatendu D. Shukla is seen, he says that both the vehicles were in speed. The witness has also deposed that there was a head on collision. She submitted that it has come on record that the driver of the car had only recently learnt driving and had obtained his driving licence in December 1981. She submitted that the impact was on the right side of the S.T. Bus. All these go to indicate that the driver of the bus was not solely responsible for the mishap. She submitted that, in the complaint, it is not indicated that the driver of the bus was trying to overtake, but another truck following the bus tried to overtake, as the picture emerging from the F.I.R. On the contrary, the driver of the car was trying to overtake the vehicle on its side and, in the process, took the car on the wrong side which resulted in the accident. She submitted that, therefore, both the drivers should have been held responsible for the accident. She submitted that the evidence of the driver has not been properly appreciated by the Tribunal.

6.1 Ms. Desai also contended that the awards are on higher side. The Tribunal has take a lenient view in assessing the compensation and the awards may, therefore, be reduced.

7. Learned Advocate, Ms. Bhaya, appearing for the car driver-Mahendra Shah submitted that, if the Panchnama is seen, it indicates the speed of the bus. The vehicle has travelled a long distance after the accident. The brake marks indicate that despite application of brake, the bus travelled a long distance. The impact on the car

was so heavy that its whole direction was changed. Its face was changed from north to south. All these aspects have been properly considered by the Tribunal while giving a finding that the driver of the bus was solely responsible for the accident.

7.1 She submited that the Tribunal has adopted a conservative approach in assessing the quantum of compensation. She submitted that the cross-objections may be allowed.

8. We have given our thoughtful consideration to the contentions raised before us in light of the material emerging from the record and proceedings. At the outset, it would be appropriate to note that, out of the cross-objections stated above, cross-objections filed in First Appeal No.934 of 1986 already stand dismised on account of non-removal of office objections.

9. So far as the question of negligence is concerned, the Tribunal has taken into consideration the evidence on record and discussed it in detail.

9.1 Driver of the car-Mahendra Hiralal Shah has deposed at Ex.175 and he has deposed that, when he reached near Lambha, a bus was coming from opposite direction and it dashed against his vehicle. The bus was a double express bus. According to this claimant, a truck was going ahead of the S.T. Bus and the bus driver, while attempting to overtake the truck, took his bus on the wrong side and dashed against the car. He states that the direction of the vehicle was changed because of the impact. He says that he was driving the car at a moderate speed of about 35 kms. per hour. He has been cross-examined, but nothing turns on it.

10. Against the deposition of this driver, bus driver-Kaluji has been examined at Ex.188. He says that he departed from Ahmedabad at about 12.45 P.M. and reached near Lambha at about 1.00 P.M. He was driving the bus on the correct side of the road. He noticed that vehicles were coming from opposite direction, one of which was the Standard Herald Car, which dashed against his bus. He says that he had slowed down his bus on seeing the car. The accident occurred because the driver of the car attempted to overtake a car going ahead of him. The driver of the bus said that the car driver suddenly turned his vehicle towards his left and, in doing so, he lost control over the vehicle and dashed against the bus.

10.1 Thus, this is a case where both the drivers have come out with conflicting theory. In order to ascertain the substance in their version, contemporaneous record prepared by independent agency like police has to be examined. The Panchnama drawn by police is at Ex.139. It is recorded that the bus was lying in a manner that the eastern edge was 12 feet 5 inches away and the western edge of the road was 10 feet away from the bus. It is an admitted position that the bus was going towards south. It is, therefore, apparent that the bus had crossed the centre of the road. It also appears that the bus had travelled a distance of about 135 feet from the place of impact after the impact. There are brake marks running for 33 feet and 3 inches of the bus in question. All these aspects are eloquent to indicate the speed of the bus, position of the bus at the time of the impact and the lack of attentiveness on part of the driver of the bus. We do not find any error on part of the Tribunal while coming to the conclusion that the driver of the bus was solely responsible for the mishap. The deposition of the driver of the bus does not inspire any confidence. The brake marks are noticed on the Kachha shoulder of the road, which means that the brakes were applied after the impact and the story put forward by the driver and the conductor of the bus, who is also a claimant in M.A.C. Case No.760 of 1982 (Appeal No.938 of 1986), cannot be given weightage. Likewise, the solitary statement of Bharatendu Shukla that both drivers were negligent cannot make any difference because the Tribunal has, in detail and depth, considered the evidence on record.

10.2 It is worth a note that it was the S.T. driver, who was prosecuted by the police and came to be convicted by learned Chief Judicial Magistrate, Narol. The contentions raised by Ms. Desai, learned Advocate for the appellant would be of no significance in this backdrop. We do not find any reason, therefore, to interfere with the finding on negligence aspect of the case.

11. So far as quantification of compensation is concerned, the respondents in First Appeal No.932 of 1986 and 934 of 1986 have pursued their claim for enhancement by preferring Cross Objections.

12. The claimant in Appeal No.932 of 1986 was the driver of the car. He is represented by Ms. Bhaya. He had sustained fracture in the right leg followed by prolonged medical treatment. The injury has resulted into permanent partial disablement. The doctor has been

examined. The disability is to the extent of 78.68% of the limb by Dr. Kanabar. He was indoor patient for 76 days and he had to undergo two surgeries. He had to undergo physiotherapy treatment for two and a half months. The Tribunal has awarded Rs. 22500/- under the head of pain shock and suffering, Rs.19,500/- for medical treatment, which included expenses for physiotherapy, conveyance, etc. An amount of Rs.2,46,600/- has been awarded under the head of economic loss. The applicant was earning Rs.1200/- per month, as is evident from a certificate at Ex.139. The applicant was also running a business in the name of "A Mahendra Engineering Equipments" of his own proprietorship and the Income-tax Assessment Order for the Assessment Year 1978-79 has been produced, which indicates the annual income at Rs.25,940/-. For the Assessment Year 1979-80, the income is assessed at Rs.21,156/-. For the Assessment Year 1980-81, the income is assessed at Rs.30,000/-, as can be seen from Ex.217. For the Assessment Year 1982-83, the income has been assessed at Rs.61,837/-. The applicant has deposed that he is specialized in manufacture of plastic film capacitors and he earned Rs.25,000/- from M/s Blue-Punk Traders towards technical consultancy. There is voluminous oral and documentary evidence produced by the applicant to support his say about his income. The Tribunal has observed that there is lack of congent and convincing evidence for assessing the income of the applicant at Rs.63,014/-, as indicated in the statement Ex.220. But there are Income Tax Returns to indicate that for the Assessment Year 1980-81, the income was assessed at Rs.30,000/-. The Tribunal refused to accept the steep rise in the income of 100% in the next year and accepted the income prior to the accident around Rs.30,000/- a year. The Tribunal has accepted the medical evidence and assessed the disability at 50% while computing loss of earning potentiality at the rate of Rs.15,000/- per annum and by adopting a multiplier of 15, assessed the future economic loss at Rs.2,25,000/- and awarded an amount of Rs.2,88,640/- as total compensation. In our opinion, the Tribunal ought to have considered prospective rise in income of the applicant while considering future economic loss. It has come on record that the applicant was an Income Tax assessee and was filing his Income Tax Returns. It is clear from the communications produced by the applicant at Ex.232 Collectively that the applicant suffered because of the accident in his profession. It also transpires that he has specialized in a particular field and considering his young age and the commercial and industrial expansion and advancement, he had reasonably good potential to earn more. His income-tax return indicate steady and

consistent rise in income. In our opinion, therefore, his future economic loss ought to have been assessed by keeping in mind his prospective rise in income. Considering the future rise in income, the income can safely be assessed at Rs.40,000/- keepi8ng in mind the imponderables. Accepting the disability as 50%, as considered by the Tribunal, his loss of income can be assessed at Rs.20,000/-, instead of Rs.15,000/-, as assessed by the Tribunal. Multiplier of 15 will have to be applied and, therefore, the claimant would be entitled to a further amount of Rs.75,000/- as compensation under the head of future economic loss. The compensation awarded under rest of the head does not call for any interference. Cross Objections preferred by the respondent-original applicant will have to be accepted accordingly.

13. Respondent in Appeal No.934 of 1986-original Claimant in Claim Case No.320 of 1982 has also preferred Cross-Objections. He was aged 45 years at the time of the accident and, as per his say, he was earning Rs.3000/- per month out of service in a middle east countries. He had sustained conduced lacerated wound on the right parietal region and one more conduced lacerated wound on the dorsom of right hand. No fracture was detected on radiological examination nor any neorological deficit was noticed by the doctor in the medical evidence. The Tribunal has awarded in all Rs.10,000/- to take care of pain, shock and suffering, medical expenses and for actual loss of income. Enhancement is sought by preferring Cross-Objections. We have examined the medical evidence and we are of a considered view that the Tribunal has properly considered and assessed the evidence and has awarded a just and reasonable compensation.

14. We have also examined other set of cases individually to consider whether the award can be said to be excessive and we are of a considered opinion that the Tribunal has taken into consideration all relevant aspects and law applicable. The amount awarded is just compensation and no interference is called for.

15. In light of the above discussion, all appeals fail. The Cross-Objections filed by the respondent-original claimant in First Appeal No.932 of 1986 is partly allowed. The claimant is entitled to an additional compensation of Rs.75,000/- with proportionate costs and interest at the same rate as awarded by the Tribunal from the date of application till realisation from the appellant and respondent No.2, the driver of the

bus. 80 percent of the amount payable to the claimant-respondent in First Appeal No.932 of 1986 will be deposited in a nationalised bank of choice of the claimant for a period of three years on usual conditions with periodical interest being receivable by the claimant. Cross Objections in Appeal No.934 of 1986 stand dismissed.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

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